

MANILA UNDERWRITERS INSURANCE CO., INC., PETITIONER, VS. HON. BIENVENIDO A. TAN, ETC. ET AL., RESPONDENTS.

G.R. No. L-12256. April 29, 1960

Ponente: PARAS, C.J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/322c87a08775/>

PARAS, C.J.:

In civil case No. 12796 between plaintiff, Gelacio E. Tambunting and defendant Jose de Borja, above respondent court on December 21, 1954, decreed as follows:

"IN VIEW OF THE FOREGOING CONSIDERATION, the court hereby renders judgment:

- (a) Dismissing the plaintiff's complaint;
- (b) Ordering the dissolution of the writ of preliminary attachment of the defendant's properties, but maintaining the bond filed by the plaintiff in full force and effect so as to respond for damages suffered by the defendant for the wrongful issuance of the said writ of preliminary attachment; and
- (c) Sentencing the plaintiff to pay the defendant the sum of P8,938.39 for the first counterclaim, P5,500.00 for the second counter-claim, P5,000.00 for the third counterclaim, P20,000.00 for the fourth counterclaim, or a total of P38,938.39, with legal interest from the filing of the said counterclaims, until paid, with costs against the plaintiff,"

During the trial of the said civil case, the defendant Borja was able to present his evidence in support of his counter-claims, but the above petitioner Surety, who had issued the attachment bond was not notified of the hearing. On January 25, 1955, petitioner Surety was furnished a copy of the decision of the respondent court referred to above.

On March 19, 1957, after the Court of Appeals (before whom appeal was made by plaintiff), had affirmed the decision of the respondent court and after the said decision had become final, respondent Borja filed a motion for a writ of execution in the said case against petitioner Surety under its bond. Petitioner Surety opposed the motion and on the date set for hearing of Borja's motion, the latter, to meet petitioner Surety's objection, orally moved to reproduce the evidence which he had previously presented during the trial on the merits of civil case No. 12796. Respondent court granted the oral officer to reproduce the evidence in the following order;

"Defendant's motion to reproduce his evidence already presented during the hearing of this case in support of his motion for execution being meritorious, the same is hereby granted. Let a writ of execution be issued against the defendant and the Manila Underwriters Insurance Co., Inc."

Petitioner filed a motion for reconsideration of said order, which motion was subsequently denied. Hence this petition.

Petitioner predicates this petition on the contention that inasmuch as it had not been notified in the manner required by Section 20 of Rule 59 of the Rules of Court before judgment has become final, it cannot be made liable under its bond.

The rule under consideration is Section 20, Rule 59 of the Rules of Court which provides:

"SEC. 20. Claim for damages on plaintiff's bond on account of illegal attachment.—If the judgment on the action be in favor of the defendant, he may recover, upon the bond given by the plaintiff, damages resulting from the attachment. Such damages may be awarded only upon application and after proper hearing, and shall be included in the final judgment. The application must be filed before the trial or, in the discretion of the court, before entry of the final judgment, with due notice to the plaintiff and his surety or sureties, setting forth the facts showing his right to damages and the amount thereof. Damages sustained during the pendency of an appeal may be claimed by the defendant, if the judgment of the appellate court be favorable to him, by filing an application therewith, with notice to the plaintiff and his surety or sureties, and the appellate court may allow the application to be heard and decided by the trial court,"

Under this rule, the defendant may recover, upon the bond given by the plaintiff, damages resulting from the illegal attachment. The damages may be awarded only upon application and proper hearing, and shall be included in the final judgment. The application must be filed before the trial, or, in the discretion of the court before entry of final judgment, with due notice to the plaintiff and his surety or sureties, setting forth the facts showing his right to damages and the amount thereof. In the interpretation of this legal provision, this Court said:

"In case no notice is given to the surety of the application for damages, the judgment that may be entered against the principal cannot be executed against the surety without giving the latter an opportunity to be heard as to the reality or reasonableness of the alleged damages. In such case, upon application of the prevailing party, the court must order the surety to show cause why the bond should not respond for the judgment, for damages. If the surety should contest the reality or reasonableness of the damages claimed by the prevailing party, the court must set the damages application and answer for hearing. The hearing will be summary and will be limited to such new defense, not previously set up by the principal, as the surety may allege offer to prove. The oral proof of damages already adduced by the claimant may be reproduced without the necessity of retaking the testimony, but the surety should be given an opportunity to cross-examine the witness or witnesses if it so desires." (Visayan Surety & Ins. Co. vs. Pascual, 85 Phil., 779; 47 Off. Gaz. 10, 5075; see also cases of Liberty Supply Construction Co. vs. Pecson, 89 Phil., 50; Del Rosario vs. Nava, 95 Phil, 912; 53 Off. Gaz. [16] 5220.)

In accordance with the foregoing interpretation, petitioner Surety not having been notified in the manner required by the Rules of Court before judgment has become final should not be made liable under its bond.

Wherefore, the order appealed from is hereby set aside. So ordered.

Bengzon, Padilla, Montemayor, Bautista Angelo, Labrador, Concepcion, Endencia, Barrera, and Gutierrez David, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.